

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Kevin Braithwaite,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1542-GMS
)	
Marcello Rispoli et al.,)	
)	
)	Trial by Jury Demanded
)	
Defendants.)	

**DEFENDANTS' MOTION FOR LEAVE TO
TAKE DEPOSITION OF PLAINTIFF**

Defendants, by undersigned counsel, hereby move for leave of Court pursuant to Federal Rule Civil Procedure 30(a)(2) and Local Rule 30.1 to take the deposition of Kevin Braithwaite, by oral examination who is confined in the Delaware Correctional Center, Smyrna, Delaware in order for Defendants to obtain discovery regarding matters relevant to their defense.

1. Since the plaintiff in this action is an unrepresented prisoner incarcerated in the Delaware Correctional Center, and is unable to be reached by telephone and other contact is impractical, counsel has spent no time attempting to reach an agreement on the subject of the motion.

2. The discovery deadline in this matter is March 2, 2007.

WHEREFORE, Defendants respectfully request that the deposition by oral examination of Kevin Braithwaite be taken on Wednesday, February 28, 2007 at 10:00 AM at the Delaware Correctional Center, Smyrna, Delaware and same be taken before a person authorized to administer oaths pursuant to Rule 28 of the Federal Rules of Civil Procedure. The deposition

will be recorded by stenographic means.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
Ophelia M. Waters, I.D. #3879
Deputy Attorney General
Carvel State Building
820 N. French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8400
Ophelia.Waters@state.de.us

Dated: February 9, 2007

SO ORDERED this _____ day of February, 2007.

United States District Judge

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FOR THE DISTRICT OF DELAWARE**

Kevin Brathwaite,)	
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Plaintiff,)	
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v.)	C.A. No. 04-1542-GMS
)	
Marcello Rispoli et al.,)	
)	Trial by Jury Demanded
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Defendants.)	

7.1.1 CERTIFICATE OF COUNSEL

Undersigned counsel hereby certifies, pursuant to Local Rule 7.1.1, that:

1. Plaintiff Kevin Braithwaite is currently incarcerated and it is not practical for undersigned counsel to communicate with him concerning Defendants' Motion for Leave to Depose Plaintiff.
2. Therefore, undersigned counsel assumes that the Motion is opposed.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
Ophelia M. Waters, I.D. No. 3879
Deputy Attorney General
Carvel State Office Building
820 North French Street, 6th Floor
Wilmington, DE 19801
(302) 577-8400
ophelia.waters@state.de.us
Attorney for Defendants

Dated: February 9, 2007

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2007, the undersigned caused the attached *Defendants' Motion For Leave to Depose Plaintiff* to be filed with the Clerk of Court using CM/ECF and delivered to the following person(s) by First Class Mail:

NAME AND ADDRESS OF RECIPIENT(S):

Kevin Braithwaite, Inmate
SBI # 00315294
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

/s/ Ophelia M. Waters
Ophelia M. Waters, I.D. No: 3879
Deputy Attorney General
Department of Justice
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
ophelia.waters@state.de.us